

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LYNWOOD C. TAYLOR,	§
	§ No. 2, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0703029123
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 28, 2011

Decided: March 1, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 1st day of March 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), the Superior Court's report following remand, the appellant's supplemental opening brief and the appellee's supplemental motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Lynwood C. Taylor, filed an appeal from the Superior Court's December 7, 2009 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Taylor's claims consisted, in part, of allegations of ineffective assistance of

his trial counsel.¹ On September 7, 2010, this Court remanded the matter to the Superior Court so that Taylor's trial counsel's affidavit might be obtained pursuant to Rule 61(g)(2) and Taylor's ineffectiveness claims reconsidered by the Superior Court in light of the expanded record.²

(2) On December 1, 2010, the Superior Court, after receiving Taylor's trial counsel's affidavit, again denied Taylor's motion for postconviction relief. In its order, the Superior Court noted that, despite being given an opportunity to respond to his trial counsel's affidavit, Taylor, who was represented by counsel, chose not to do so. On January 26, 2011, Taylor, also represented by counsel on appeal, submitted his supplemental opening brief. In his brief, Taylor re-asserts the ineffectiveness claims made in his original motion, with the exception that he now waives the claim that his counsel's position as a volunteer attorney for the Office of the Child Advocate resulted in a conflict of interest.

(3) In his supplemental opening brief on appeal, Taylor's counsel claims that a) trial counsel failed to investigate pertinent evidence and failed to meet with Taylor to discuss the case; b) a dispute over legal fees negatively impacted Taylor's trial counsel's performance; and c) trial

¹ At trial, Taylor was found guilty of six counts of Rape in the First Degree and one count each of Continuous Sexual Abuse of a Child and Endangering the Welfare of a Child. This Court affirmed Taylor's convictions on direct appeal. *Taylor v. State*, Del. Supr., No. 103, 2008, Jacobs, J. (Dec. 24, 2008).

² *Taylor v. State*, Del. Supr., No. 2, 2010, Berger, J. (Sept. 7, 2010).

counsel failed to ask the questions that Taylor wanted him to ask the victim at trial.

(4) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a strong presumption that the representation was professionally reasonable.⁴ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.⁵

(5) While Taylor's amended opening brief lists four unprofessional errors allegedly committed by his trial attorney, it omits any discussion of his counsel's affidavit or how any actions on the part of his counsel amounted to error that prejudiced his case.⁶ As such, we conclude that Taylor has failed to meet the requirements of the Strickland standard and has failed to demonstrate that his counsel provided ineffective assistance. Therefore, the Superior Court's judgment on that issue must be affirmed.

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁵ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁶ *Strickland v. Washington*, 466 U.S. 668, 690, 693 (1984).

(6) In his *pro se* brief on appeal, Taylor made the following additional claims, which we now address: a) his speedy trial rights were violated; b) the victim recanted her testimony, requiring a new trial; c) his Miranda rights were violated; d) he was afforded insufficient time to review the victim's diary prior to trial; and e) there was no DNA evidence to support the State's case.

(7) The Superior Court is required to apply the procedural requirements of Rule 61 before deciding a defendant's postconviction claims on their merits.⁷ In this case, Taylor's claims of speedy trial and Miranda violations are defaulted because they were not raised in the proceedings leading to the judgment of conviction.⁸ In the absence of any evidence of cause for relief and prejudice, those claims are procedurally barred.⁹ Taylor's remaining evidentiary claims were formerly adjudicated in his direct appeal.¹⁰ In the absence of any evidence that the claims should be reconsidered in the interest of justice, they, too, are procedurally barred.¹¹

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁸ Super. Ct. Crim. R. 61(i)(3).

⁹ Super. Ct. Crim. R. 61(i)(3)(A) and (B).

¹⁰ Super. Ct. Crim. R. 61(i)(4).

¹¹ *Id.*

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice